

1
2
3
4
5
6
7
8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11

12
13 KENNETH HALL,
14 Petitioner,
15 v.
16 CAPTAIN LAWSON,
17 Respondent.
18

Case No. ED CV 15-1071 GHK (MRW)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

19 The Court vacates the reference of this action to the Magistrate Judge and
20 summarily dismisses the action without prejudice pursuant to Rule 4 of the Rules
21 Governing Section 2254 Cases in the United States District Courts and Federal
22 Rule of Civil Procedure 41.

23 * * *

24 This is a state habeas action. Petitioner pled guilty in state court in 2011 to a
25 charge of possessing marijuana while in custody. The state court sentenced him to
26 a term of 44 months in prison. Petitioner's sole claim in his federal habeas petition
27 is that he was "kept 31 day[s] past my release date" on that drug charge in 2014.
28 (Docket # 1 at 5.)

1 Petitioner’s current habeas filing is subject to summary dismissal. Federal
2 habeas relief is only available when a person is “in custody” pursuant to a state
3 court judgment in violation of federal law. 28 U.S.C. § 2254(b); Maleng v. Cook,
4 490 U.S. 488, 490-91 (1989) (habeas statute requires that petitioner be
5 “‘in custody’ under the conviction or sentence under attack at the time his petition
6 is filed”); Nettles v. Grounds, ___ F.3d ___, 2015 WL 3406160 at *7 (9th Cir. May
7 28, 2015) (federal habeas relief available “only if success on the claim would
8 necessarily spell speedier release from custody”) (quotation omitted); see also
9 Abdala v. INS, 488 F.3d 1061, 1064 (9th Cir. 2007) (immigration detainee’s
10 habeas petition under 28 U.S.C. § 2241 is moot when detainee released from
11 custody, deported from United States, and there are no “collateral consequences
12 that are redressable by success on his original petition”).

13 Moreover, state prisoners are generally required to exhaust (that is, present)
14 their claims to the state’s highest court before seeking relief in federal court.
15 28 U.S.C. § 2254(b)(1)(A); Rose v. Lundy, 455 U.S. 509 (1982). On habeas
16 review, the Court can only consider a claim for which the state courts issued a
17 decision that was contrary to or an unreasonable application of clearly established
18 federal law. 28 U.S.C. § 2254(d)(1).

19 The petition fails to satisfy either the “in custody” or exhaustion
20 requirements of federal law. From the face of the petition and supporting
21 materials, it is clear that Petitioner is no longer in custody as a result of a state
22 court judgment. As such, Petitioner’s habeas claim is moot as he cannot benefit
23 from relief from this Court. Maleng, 490 U.S. at 490-91. Further, the petition fails
24 to state that Petitioner properly exhausted a constitutional claim for relief in state
25 court. As a result, there is no decision of the state’s highest court for this federal
26 court to review. Rose, 455 U.S. 509; 28 U.S.C. § 2254(d)(1).

1 Finally, Petitioner did not respond to the Court's order that he explain the
2 obvious defects with his petition. Mail sent to Petitioner's various addresses has
3 been returned as undeliverable. Dismissal of the action under Federal Rule of
4 Civil Procedure 41 based on Petitioner's failure to prosecute the action is
5 appropriate. The Court and the Attorney General have a clear interest in
6 terminating this action. Furthermore, because Plaintiff is a pro se litigant who has
7 not abided by the Court's order or provided a legitimate mailing address as
8 required by Local Rule 41-6, no sanction short of dismissal will be effective in
9 moving this case forward. Omstead v. Dell, Inc., 594 F. 3d 1081, 1084 (9th Cir.
10 2010) (factors relevant to Rule 41 dismissal); Carey v. King, 856 F.2d 1439, 1440
11 (9th Cir. 1988) (same).

12 For the reasons set forth above, the action is therefore DISMISSED without
13 prejudice.

14 IT IS SO ORDERED.

15
16 Dated: 7/20/15



17 HON. GEORGE H. KING
18 CHIEF UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28